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July 15, 1996

**BY HAND**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

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JUL 15 1996

ATTORNEY GENERAL'S OFFICE  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

**Re: Comments of AlphaStar Television Network Inc.;**  
**IB Docket No. 96-111**  
**CC Docket No. 93-23**  
**RM-7931**  
**FCC File No. ISP-92-007**

Dear Mr. Caton:

Transmitted herewith on behalf of AlphaStar Television Network Inc. ("AlphaStar"), is an original and four (4) copies of Comments with reference to the above-captioned matter.

Any question with respect to this matter should be directed to the undersigned.

Respectfully submitted,



Michael J. Lehmkuhl  
Attorney for AlphaStar  
Television Network Inc.

Enclosures

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**COMMENTS OF**

**ALPHASTAR TELEVISION NETWORK INC.**

AlphaStar is a new U.S. digital direct-to-home ("DTH") satellite service owned by

<sup>1</sup> Notice of Proposed Rule Making, FCC 96-210, (released May 14, 1996) (hereinafter "Notice" or "NPRM").

stations located in Oxford, CT. AlphaStar uplinks its programming from this facility to the medium powered FSS Ku-band transponders on AT&T's Telstar 402R satellite. Full-time service commenced earlier this month and is presently marketed in the continental United States, Alaska, Hawaii, and Puerto Rico.

AlphaStar applauds the Commission's recent efforts to open up the U.S. satellite market to non-US licensed satellite operators and service providers in its most recent Domestic International Satellite Consolidation Order known as DISCO II. It is AlphaStar's hope, as it is the Commission's, that the ECO-Sat policy will serve to break down existing market and regulatory barriers throughout North America between the U.S., Canada, and Mexico. The policy promises to bring effective competition to a truly global industry which, AlphaStar believes, should not only be the goal of the United States but for most of the world. AlphaStar knows first hand the frustrations these market barriers pose to new entrants. As a result of then existing U.S. - Canadian transborder policies, AlphaStar was forced to invest tens of millions of dollars in its uplink facility in Oxford, CT to access Telstar rather than use its existing uplink facility in Ontario to provide service in the United States. DISCO I<sup>2</sup> eased the international constraints (including transborder restrictions) faced by U.S. satellite operators and earth station licensees, and now DISCO II promises to open the U.S. to the international satellite market allowing U.S. licensees like AlphaStar even greater flexibility in the delivery of DTH to an international market.

While it agrees with most of the Commission's proposals, however, AlphaStar is concerned with the Commission's proposed implementation of the ECO-Sat test. First, the Commission should not exclude pending applications-- most notably the applications of

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<sup>2</sup> Amendment to the Commission's Regulatory Policies Governing Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd. 2429 (1996) ("DISCO I").

TelQuest Ventures, L.L.C. ("TelQuest")<sup>3</sup> and Tele-Communications, Inc. ("TCI")<sup>4</sup> to offer direct broadcast service ("DBS") to the U.S. from a Canadian DBS satellite-- from consideration under the ECO-Sat test. Applying old policy to applications filed just before adoption of the Notice that bear directly on the issues at hand does not serve the public interest. Exempting them from consideration in the name of fairness simply because they were filed before release of the NPRM ignores the overwhelming public interest concerns at stake in this proceeding. Therefore, the Commission should exclude from the ECO-Sat test only licenses or authorizations granted under the Commission's previous policy.

Second, as a U.S. earth station licensee, AlphaStar is concerned that the Commission's proposed implementation of ECO-Sat threatens to unduly burden earth station licensees with administrative delay in the application process. Furthermore, in addition to applying ECO-Sat to services to the U.S. and within the U.S. via foreign satellites, the Commission proposes to apply the test to transmissions from the U.S. via foreign satellites. This proposal would place new entrants and new U.S. licensees at a severe competitive disadvantage with respect to delivery of services to Canada and Mexico via the Anik, Morelos, and Solidaridad systems. While the Commission's policy goals may be achieved in the long term, the public interest is not served by forcing the market into a policy vacuum.

Lastly, AlphaStar supports the proposed Commission's revisions to Section 25.131 of the Rules regarding receive-only earth stations and urges the Commission to adopt a one-time blanket licensing system for DTH systems.

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<sup>3</sup> Application of TelQuest Ventures, FCC File Nos. 758-DSE-P/L-96 and 759-DSE-L-96, Public Notice, Report No. DS-1615 (released March 27, 1996).

<sup>4</sup> Application of Western Tele-Communications, Inc., FCC File No. 844-DSE-P/L-96, Public Notice, Report No. DS-1619 (released April 10, 1996).

**THE COMMISSION SHOULD CONSIDER THE APPLICATIONS OF  
TELOQUEST AND TCI UNDER THE ECO-Sat TEST**

The NPRM proposes, purportedly in the interest of "fairness", that applications filed before the adoption of the Notice should escape consideration under the ECO-Sat test.<sup>5</sup> Of particular concern to AlphaStar, however, are the pending applications of TelQuest and TCI to offer DBS service to the United States from Canadian orbital locations. As AlphaStar has stated previously, these applications raise serious questions in light of the lack of equivalent competitive opportunities in Canada; questions which fall squarely within this proceeding.<sup>6</sup> Indeed, the Executive Branch has recently raised its own public interest concerns regarding these applications and has urged the Commission to defer consideration.<sup>7</sup> Included among these are the lack of reciprocal rights for U.S. satellite operators and other competitive concerns-- items being directly considered in this rule making. The fact that the Executive Branch has also raised foreign policy concerns bears directly upon the "Consideration of Additional Public Interest Factors" aspect of the ECO-Sat analysis.<sup>8</sup>

The licensing of these facilities without proper consideration under the Commission's proposed ECO-Sat test makes a mockery of the Commission's public interest concerns of competition and fair play in the industry. While the Commission would exempt these

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<sup>5</sup> NPRM at ¶ 20.

<sup>6</sup> See, e.g. Comments of AlphaStar Television Network Inc. in Application of TelQuest, Note 3 supra.

<sup>7</sup> See, Letter of July 1, 1996 to Reed Hunt, Chairman, FCC from Ambassador Vonya B. McCann, U.S. Coordinator, International Communications and Information Policy, U.S. Department of State; Ambassador Jeffrey Lang, Deputy U.S. Trade Representative, Office of U.S. Trade Representatives; David S. Turetsky, Deputy Assistant Attorney General, U.S. Department of Justice; and Larry Irving, Assistant Secretary for Communications and Information, NTIA, U.S. Department of Commerce (hereinafter "Executive Letter").

<sup>8</sup> See, Executive Letter, at page 2; NPRM at ¶¶ 48 - 51.

applications from consideration in the interest of fairness and expediency to these two applicants, the larger public interest rests with ensuring that competitive balance in the industry is not artificially skewed in one direction or the other. Thus, "fairness" to the rest of the industry which has strenuously voiced its objections would be ignored.<sup>9</sup> Because these applications raise serious questions of direct consequence to this proceeding, and in the same interests of fairness, AlphaStar urges the Commission to consider these applications under the ECO-Sat test. In the interests of "fairness", AlphaStar believes that only licenses and authorizations granted under the Commission's previous policy<sup>10</sup> be exempt from consideration and that any applications upon which the Commission has yet to act should be considered under ECO-Sat. The public interest is not served by making decisions on out dated policy when the new policy is so close at hand. A uniform rule exempting pre-existing licenses and pre-existing decisions before adoption of the NPRM would better serve the Commission's interests of fairness.

**THE COMMISSION'S RULES SHOULD NOT IMPOSE UNDUE ADMINISTRATIVE  
AND COMPETITIVE BURDENS ON ITS OWN LICENSEES.**

The Commission proposes to apply ECO-Sat to "all U.S. earth station applications involving transmissions to, from, or within the United States via non-U.S. licensed space stations."<sup>11</sup> AlphaStar questions the Commission's tentative conclusion to apply the ECO-Sat test to all new U.S. earth station applications involving service from the United States via

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<sup>9</sup> See, e.g. Comments of MCI Telecommunications Corporation, filed April 3, 1996 and April 5, 1996 in both the Applications of TelQuest and TCI matters, at Note 3 supra.

<sup>10</sup> See, IDB Worldcom Services, 10 FCC Rcd. 7278 (1995); Vision Accomplished, 11 FCC Rcd. 3716 (1995).

<sup>11</sup> NPRM at ¶ 19.

non-U.S. licensed space stations. Currently, the Commission routinely authorizes U.S. licensed earth stations to communicate with foreign satellites, such as the Canadian Anik and Mexican Solidaridad systems, for the provision of service to those countries. Subjecting new applicants requesting such access to the ECO-Sat test would unnecessarily delay these applications and cause a competitive disparity between previously licensed earth station operators and new earth station applicants. Although U.S. satellites may be denied access to Canada and Mexico, ECO-Sat would even the score by barring foreign satellites from providing services to or within the U.S. on this basis until reciprocal opportunities are in place and therefore already serves the Commission's policy objectives. On the other hand, ECO-Sat, as it is presently proposed, would deny to future licensees access that is currently permitted from U.S. earth stations simply to support competition among satellite carriers. Although the Commission has an interest in establishing a uniform ECO-Sat policy, precluding future licensees from providing currently authorized service from the U.S. to foreign countries via foreign satellites until reciprocal opportunities exist ignores the competitive realities of the marketplace, and as such, does not serve the public interest.

The Commission also proposes to require all earth station applicants proposing to communicate over non-U.S. satellite systems to demonstrate that the countries they intend to serve do not maintain *de jure* barriers to U.S. licensed satellites.<sup>12</sup> As an earth station licensee, AlphaStar is concerned about the administrative burden imposed on earth station licensees and the application backlog this process threatens to create. AlphaStar favors the Commission's proposal to require satellite licensees to submit a list of all countries in which they are permitted to serve, along with a list of services, provided that this information is

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<sup>12</sup> NPRM at ¶ 39.

submitted at least on a quarterly basis instead of annually or semi-annually.<sup>13</sup> Further, satellite licensees should be encouraged to make these reports on an *ad hoc* basis whenever possible. Other entities such as U.S. government agencies (*e.g.*, the Commission itself or the Department of Commerce) or foreign administrations should also be encouraged to submit these types of reports as well.

The Commission proposes to compile these lists and distribute them as *prima facie* evidence of *de jure* compliance under ECO-Sat.<sup>14</sup> AlphaStar also supports this procedure but cautions that there is a danger of creating an administrative backlog and a short-term economic and competitive burden on earth station licensees if these "lists" are not updated and made available to the public on a timely basis. AlphaStar suggests that these lists should, at the very least, be made available no more than a few days after submission to the Commission. The administrative burden on the Commission would be minimal given that the list would track less than 200 countries.

**ALPHASTAR SUPPORTS THE COMMISSION'S PROPOSED  
RECEIVE-ONLY EARTH STATION POLICIES**

AlphaStar agrees that the time has come to eliminate the licensing requirement for receive-only earth stations that receive international signals carried over U.S.-licensed FSS systems.<sup>15</sup> In light of the Commission's decision in DISCO I eliminating the regulatory distinction between international and domestic communications, this requirement has become outmoded. AlphaStar also agrees with the Commission's proposal to continue licensing receive-only signals from

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> 47 C.F.R. § 25.131(b)-(i); NPRM at ¶ 78.



foreign satellites. The enumerated spectrum management and competitive concerns amply support this proposal. Moreover, in the interests of eliminating unnecessary regulation, AlphaStar would favor continuing to exempt Intelsat K and Intelnet I services operating on receive-only earth stations from a licensing requirement.<sup>16</sup> However, in light of Comsat's request for waiver, AlphaStar would ask that any further relaxation of receive-only licensing be applied to the entire industry and not just to Intelsat.<sup>17</sup>

Furthermore, AlphaStar believes that the Commission's proposal to institute blanket licensing of technically identical earth stations is also desirable especially within the context of DTH. AlphaStar recommends, however, that in light of the Commission's recognition that technically identical DTH receive-only antennas could conceivably number in the millions for any one system, the Commission should simplify the process and offer an unlimited blanket application.<sup>18</sup> Moreover, this blanket application process should be subject to a very low one-time processing fee per system rather than per earth station. This would allow DTH system operators to compete effectively with terrestrial-based multichannel video programming distributors ("MVPDs"). Cable systems would need only one receive-only earth station for the reception of programming off of a foreign satellite for distribution over their own system. A DTH system has hundreds of thousands or millions of earth stations. A situation where DTH would pay more than a few cents per subscriber earth station for blanket licensing would put DTH at a competitive disadvantage with these terrestrial MVPDs.

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<sup>16</sup> NPRM at ¶¶ 76 and 79.

<sup>17</sup> Communications Satellite Corporation, 7 FCC Rcd. 6028 (1992).

<sup>18</sup> NPRM at ¶ 80.

## **CONCLUSION**

The Commission should not undermine its ECO-Sat strategy by allowing currently pending applications such as those of TelQuest and TCI to escape consideration of its ECO-Sat test. Although they were filed before the Notice was adopted, the public interest is not served by applying old policy to these applications. The competitive effects on the industry would be disastrous. Furthermore, the Commission's ECO-Sat test should not impose undue regulatory or competitive burdens on new earth station licensees. The Commission should not delay the use of Anik, Morelos, or Solidaridad for services that have been routinely authorized in the past. This would only disadvantage new satellite earth station licensees to the competitive advantage of preexisting licensees. Lastly, it is time for the Commission to change its outdated policies on licensing receive-only earth stations. In doing so, AlphaStar agrees that a blanket licensing procedure should be adopted.

Despite these concerns, AlphaStar applauds the Commission's ECO-Sat strategy for allowing service over non- U.S. satellite systems. The ECO-Sat test will facilitate greater access to foreign satellites for the benefit of U.S. users and will, at the same time help to break down the regulatory barriers that have made it difficult for companies such as AlphaStar to compete in a global marketplace.

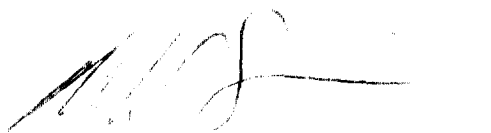
Respectfully submitted,

**ALPHASTAR TELEVISION NETWORK INC.**



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